

HOUSE BILL NO. 35

INTRODUCED BY T. SCHMIDT

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO AMEND ITS ADMINISTRATIVE RULE GOVERNING THE MEDICAID PHYSICIAN REIMBURSEMENT RATE TO INCREASE THAT RATE IN AN AMOUNT REQUIRED BY LAW FOR FISCAL YEAR 2011; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, in 2007, the Montana Legislature enacted section 53-6-125, MCA, specifying the formulas by which the Department of Public Health and Human Services would establish the Medicaid reimbursement rates for physicians' services for fiscal years 2008 through 2014 and beyond, including an increase in that rate for fiscal year 2011 as required by section 53-6-125(2)(c), MCA, by which the 2010 rate was to be increased by 6% for fiscal year 2011; and

WHEREAS, despite the requirements of section 53-6-125(2)(c), MCA, requiring that the 2010 Medicaid reimbursement rate for physicians' services be increased for fiscal year 2011, the Department proposed an administrative rule on April 29, 2010, that did not increase the Medicaid reimbursement rate for physicians' services by the statutorily required amount; and

WHEREAS, the Director of the Department informed the Children, Families, Health, and Human Services Interim Committee by letter on July 23, 2010, that the Department would not increase the Medicaid reimbursement rate for physicians' services in the amount required by section 53-6-125(2)(c), MCA, because section 17-7-140, MCA, gave the "Executive Branch the authority to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium when a general fund budget deficit exists"; and

WHEREAS, on June 24, 2010, the Department adopted the proposed rule setting the reimbursement rate for physicians' services for fiscal year 2011 at the fiscal year 2010 reimbursement level, which is a rule contrary to the requirements of section 53-6-125(2)(c), MCA, is a rule that the Department has no authority to adopt, and is therefore a rule that violates section 2-4-305, MCA, of the Montana Administrative Procedure Act; and

WHEREAS, an Executive Branch department or office does not have the authority to amend a statute

1 by the adoption of an administrative rule or the authority to undermine the purpose of a statute and any attempt
2 to do so is a violation of the constitutional doctrine of the separation of powers embodied in Article III, section 1,
3 of the Montana Constitution; and

4 WHEREAS, after receiving the written refusal of the Department to comply with section 53-6-125(2)(c),
5 MCA, the Interim Committee voted to request a bill to amend the Department's rule to comply with the
6 requirements of section 53-6-125(2)(c), MCA.

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 NEW SECTION. **Section 1. Department to amend administrative rule.** The department of public
11 health and human services shall amend ARM 37.85.212(8)(b) to increase the fiscal year 2010 medicaid
12 reimbursement rate for physicians for covered services by the amount provided for in 53-6-125(2)(c) for fiscal
13 year 2011.

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15 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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17 NEW SECTION. **Section 3. Retroactive applicability.** [This act] applies retroactively, within the
18 meaning of 1-2-109, to July 1, 2010.

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